

REMARKS

Claims 1, 2, 4-7, 9, 10, 12-14, 17, 20, 22, 23, 25 and 29, as amended are pending and under active consideration in this application. Claims 3 and 24 have been cancelled, and the dependency of claim 4 has been changed due to the cancellation of claim 3. No new matter has been submitted in making this change.

Applicants appreciate the courtesies extended to their representative, Allan A. Fanucci (Reg. No. 30,256), during an interview with Examiner Carolyn Paden on March 20, 2003. The comments appearing herein are substantially the same as those presented and discussed during the interview.

At the interview, Examiner Paden clarified that claims 7, 9, 10, 12-14, 17, 22 and 25 were in allowable form. Thus, the only current claims under rejection are claims 1, 2, 4-6, 20, 23 and 29.

These claims rejected as being anticipated were rejected under 35 U.S.C. §§ 102(b) by Krawczyk. As previously explained, Krawczyk is directed to a reduced calorie confection using a cellulose surfactant. The cellulose surfactant taught by Krawczyk comprises microcrystalline cellulose/surfactant composite, but it does not disclose, teach or suggest the specific emulsifiers that are recited in the present claims.

Claim 1 recites a chocolate composition comprising an emulsifier component having a melting point from about 60 to 90°C and a hydrophilic lipophilic balance value from about 2 to 10. The emulsifier component comprises at least one of a diacetyltartaric acid ester of monoglycerides, mono- and diglycerides of vegetable oils, partially hydrogenated monoglycerides, fully hydrogenated monoglycerides, or sugar esters. Krawczyk cannot anticipate this claims because he discloses a much broader range of surfactants, i.e., those that have HLB values of from 1 to 40. Although Krawczyk prefers surfactants having a HLB value of between 2 and 7, Krawczyk also prefers to use other surfactants having much higher HLB values (see e.g., those listed in col. 4, lines 9-26 and #6j in Table I). These surfactants are used in combination with a cellulose material as a composite. Cellulose materials are not disclosed or claimed in the present invention. In contrast, applicants disclose certain specific emulsifiers and further defines them as having a melting point of at least 60°C.

The examiner previously noted that Example 1 of Krawczyk appears to have an emulsifier that has a melting point of over 60°C, based on the temperature reached for melting the surfactant is 71.1°C. As explained in a prior amendment, this does not disclose the melting temperature of the surfactant, and it appears that the temperature must be less than

60°C since the composite is homogenized at a temperature of between 60 - 65°C. Example 3 shown that the same surfactant can be dissolved into propanol at 60°C, while Example 2 shows that a similar surfactant has a melting temperature of 54.4°C. Furthermore, the sorbitan monostearate used in these examples is not one of the emulsifier compounds that are specifically mentioned in claim 1.

The skilled artisan is not led to the present invention by the disclosure of sorbitan monostearate in Example 1. There is no teaching on Krawczyk to only use high melting point emulsifiers of the types mentioned in claim 1. As noted above, sorbitan monostearate has a melting point that is below that of the claim, with 54.4°C disclosed in Example 2. Thus, claim 1 is patentable over Krawczyk.

Claim 2 recites a chocolate composition comprising an emulsifier component of a monoglyceride, a diglyceride, a sorbitan ester or a sugar ester, a melting point from about 50 to 90°C and a hydrophilic lipophilic balance value from about 2 to 10, and further wherein the emulsifier component is present in an amount of about 2.2 to 6 percent by weight. The amount of emulsifier is much greater than that used in the prior art. The specification discloses that emulsifiers in chocolate are used at much lower amounts (see first full paragraph on page 4). Krawczyk confirms this, in that he uses amounts of emulsifiers that are less than that recited in claim 2.

While Krawczyk discloses that 1 to 50% of the composite (i.e., the cellulose and the surfactant) can be used, the examples illustrate that the amount of surfactant in the composite is not as high as claimed. In table I of Krawczyk, the amounts of surfactant vary from a low of 0.24% for #6h to 2% for #6e. These amounts are calculated from the ratio (i.e., wt. %) of surfactant in the composite and the amount of composite used. As an example, in #6d, 20% of the composite is sorbitan monostearate, and the composition is present at an amount of 6%, so that the amount of sorbitan monostearate is 1.2%. Other entries in the table are calculated as follows: #6f – 1%, #6g – 0.36%, #6i – 1.2%, and #6j – 1.2%. Also, Krawczyk teaches at col. 14, lines 59-62 that the amounts used in the table represent high levels of the composite, and states a maximum value of 10% for the complex. As all emulsifiers of Table I are present in an amount of 2% or less, while the present claim recites a minimum value of 2.2%.

Furthermore, there is no teaching in Krawczyk to use emulsifiers having the melting temperatures or HLB values recited in claim 2. In Table I, #6j uses an emulsifier that has an HLB of 20. Even the low HLB surfactants were unsuitable (e.g., #6I) due to poor taste. As

there is no inherent disclosure of the present invention by Krawczyk, claim 2 should not be rejected.

As claims 4-6, 20 and 23 depend from claims 1 or 2, these claims are also allowable.

The remaining independent claim, claim 29, is directed to a method. This claim is patentable for the same reasons as claim 9, but in addition it recites that a chocolate can be obtained that maintains its structure to 36°C. This feature further distinguishes claim 29 from Krawczyk. Thus, the rejection based on Krawczyk should be withdrawn as to all remaining claims.

In view of the comments and amendments above, applicants submit that the entire application is now in condition for allowance. If any issues remain in connection herewith, Applicants kindly request that the Examiner telephone the undersigned to discuss them.

Respectfully submitted,

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